

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LANNIE HOPKINS)	
Claimant)	
VS.)	
)	
HOLIDAY INN EXPRESS HOTEL & SUITES)	Docket Nos. 1,001,164
Respondent)	& 1,007,259
AND)	
)	
SPECIALTY RISK SERVICES)	
Insurance Carrier)	

ORDER

Respondent appeals the January 22, 2003 Order of Administrative Law Judge Brad E. Avery. Claimant was granted benefits in the form of temporary total disability compensation commencing July 9, 2002, and medical treatment with Neal D. Lintecum, M.D.

There is some confusion regarding which case is before the Appeals Board (Board). The preliminary hearing transcript lists Docket No. 1,001,164. At the preliminary hearing, the Administrative Law Judge further announced that the matter before the court was in Docket No. 1,001,164. This docket number deals with a date of accident of July 8, 2001, to claimant's right hand and wrist. Respondent's attorney announced at the preliminary hearing that there was no dispute regarding the July 8, 2001 injury to claimant's right upper extremity in Docket No. 1,001,164.

When the Administrative Law Judge issued the Order for benefits, the Order listed Docket No. 1,007,259. This docketed case deals with a June 12, 2002 injury to claimant's left hand and wrist. That matter is disputed by respondent. The issues to be determined by the Board in this Order are in Docket No. 1,007,259, with an alleged injury date of June 12, 2002, and an alleged injury to claimant's left hand and wrist.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on the date alleged?

- (2) Did claimant provide respondent with timely notice of accident as required by K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds the Order of the Administrative Law Judge should be affirmed.

As noted above, there is some confusion regarding which injury, which docketed claim and which date of accident is actually in dispute. A review of the preliminary hearing transcript clarifies that it is Docket No. 1,007,259, with an accident date of June 12, 2002, and an injury alleged to claimant's left hand and wrist, that is actually in dispute.

Claimant initially suffered an injury to his right hand and wrist on July 8, 2001, when working in the laundry room of respondent's facility. Claimant testified that he experienced a cramp in his right hand, which he described as very severe. Claimant was referred to the emergency room at St. Francis Hospital and Medical Center and was ultimately referred to David Beard, M.D., and then to orthopedic surgeon Neal D. Lintecum, M.D. Claimant underwent a trigger finger release and carpal tunnel syndrome release to the right upper extremity. On June 11, 2002, Dr. Lintecum returned claimant to work without restrictions.

Claimant actually returned to work for respondent on June 12, 2002, working approximately five and a half hours. He testified he then began experiencing symptoms in his left hand. Claimant also testified that after both injuries, he told the executive housekeeper, Janice Serrano (who is also claimant's girlfriend), of the accidents. After the first accident, a respondent's Incident Report was filled out, detailing the July 8, 2001 right upper extremity symptoms and accident. No such documentation was created after the second incident. Claimant was fired on June 12, 2002.

When claimant was examined by Dr. Lintecum on July 9, 2002, his right hand and wrist were found to have improved substantially. However, Dr. Lintecum's letter of July 9, 2002, to Donald T. Mead, M.D., at St. Francis Hospital and Medical Center, indicates that, when claimant returned to work, he began experiencing symptoms on the left side. Dr. Lintecum offered if workers' compensation approval was obtained, he would be glad to see claimant for the left side complaints.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

¹ K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

The question of whether there has been an accidental injury arising out of and in the course of employment is a question of fact.²

The phrase “arising out of” employment requires some causal connection between the injury and the employment.³

The phrase “in the course of” employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the worker was at work in his employer’s service.⁴

In this matter, claimant is the only person to testify. His testimony is uncontradicted regarding the circumstances surrounding the accident. While it is acknowledged no accident report or incident report was prepared after the alleged injury to his left upper extremity, there is also no contradictory evidence. Additionally, the letter of July 9, 2002, from Dr. Lintecum to Dr. Mead discusses the fact that claimant started experiencing symptoms on the left side after he went back to work. This evidence is also uncontradicted and, as Dr. Lintecum’s deposition was not taken, there is no other explanation for those comments.

The Board finds, based upon the evidence presented at this time, that claimant has proven that he suffered accidental injury arising out of and in the course of his employment to his left upper extremity.

K.S.A. 44-520 requires that notice of accidental injury be given to respondent within 10 days after the date of accident. In this instance, claimant, again the only person to testify, stated that he advised the executive housekeeper, Janice Serrano, both times of the injuries to his right and left upper extremities. Claimant actually went on to state that at the time of the injury to his left wrist, Ms. Serrano was in the laundry room and “she seen it.”

Again, this evidence is uncontradicted. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy.⁵

² *Harris v. Bethany Medical Center*, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

³ *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P. 2d 197 (1956).

⁴ *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984).

⁵ *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

The Board, therefore, finds that the Order of the Administrative Law Judge awarding claimant benefits is affirmed, with the clarification that the award is in Docket No. 1,007,259, with the date of accident of June 12, 2002, and for an injury to claimant's left hand and wrist.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated January 22, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2003.

BOARD MEMBER

c: George H. Pearson, III, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation